

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Stephan NEES et al.

Entitled: METHOD AND APPARATUS FOR PRESERVING THE ENDOTHELIUM
IN ISOLATED HOLLOW ORGANS AND BIOLOGICAL VESSELS

Serial No.: 10/560,407	: Group Art Unit: 1651
	:
Filed: November 8, 2006	: Examiner: Sandra E.
SAUCIER	:
	:
Attorney Docket No.: LNK-038	: Confirmation No.: 5484

PETITION UNDER 37 C.F.R. 1.181(a) TO WITHDRAW AND REISSUE THE OFFICE ACTION OF APRIL 13, 2010

Mail Stop PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully petition under 37 C.F.R. 1.181(a) that Final Office Action mailed April 13, 2010 be withdrawn and reissued, and thus the period for response thereto be reset, on the grounds that Applicants did not receive the afore-mentioned outstanding Office Action. The undersigned respectfully submits that the facts are as follows.

1. On August 31, 2010, the undersigned was notified by clients that an office action had been issued and response was outstanding. Prior to this notification, neither Applicants nor the undersigned had knowledge of the outstanding office action. Moreover, the undersigned's records showed the last USPTO correspondence to be a Non-Final Office Action issued September 30, 2009, response for which was filed on January 7, 2010.

2. On September 1, 2010, the undersigned accessed the USPTO PAIR system and downloaded the outstanding Final Office Action. The Final Office Action indicated a delivery mode of "ELECTRONIC" and a mail date of "April 13, 2010".
3. The undersigned enlisted in the USPTO's electronic document delivery program in 2009 and registered chalin@smithpatent.com as the email address of record for Customer Number 31,496. It is the practice of the undersigned to automatically copy all Private PAIR Correspondence Notifications (i.e., all incoming messages from the sender PAIR_cOfficeAction@uspto.gov) to a separate "PAIR" mailbox.
4. Although the undersigned has successfully received electronic correspondence from the USPTO since at least July of 2009, including the Non-Final Office Action issued on September 30, 2009 in connection with the instant application, the undersigned can find no record of the above-noted Final Rejection of April 13, 2010. The undersigned reviewed the electronic records in the "PAIR" mailbox as well as all other "smithpatent.com" mailboxes, including the trash, junk mail, and spam folders.
5. Accordingly, the undersigned concludes that Applicants never received the Final Office Action of April 13, 2010.

The undersigned provides herewith the following documents to support the instant Petition and allegation of facts:

1. Exhibit 1: Excerpts from the USPTO E-Mail Log for Customer Number 31496 covering material received between April 1, 2010 and April 30, 2010 and confirming that the Office Action of April 13, 2010 issued in connection with USSN 10/560,407 was not received;

2. Exhibit 2: The results of a search for Attorney Docket No. "LNK-038" in all mailboxes in the chalin@smithpatent.com email account; and
3. Exhibit 3: The results of a search for U.S. Serial No. "10/560,407" in all mailboxes in the chalin@smithpatent.com email account.

In view of the above, Applicants respectfully requests withdrawal and reissue of the Final Rejection of April 13, 2010.

The undersigned declares that all statements made herein of her own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Applicants believe that no fee is required for this petition. However, in the event that further fees are required to address the instant petition and/or maintain the pendency of this application, the Commissioner is authorized to charge such fees to our Deposit Account No. **50-2101**.

If any USPTO Officer has any questions or concerns regarding this communication, he or she is invited to contact the undersigned.

Respectfully submitted,

Date: **September 9, 2010**

By: **/chalin a. smith/**

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CUSTOMER NUMBER 31,496